

government per annum, we understand that most of this is not reaching the units.

- participation of Aboriginal expertise and the creation of a culture of competition between units and between states. This phenomenon results in envy and unhealthy division.
- the denial of the opportunity to concentrate our elders, our thinkers, our planners and our communities in the context of higher education maximisation nationally.
- the present situation does not allow Aborigines to readily develop a contemporary and functional national perspective and to be able to identify with that posture, while at the same time, permitting the retention of the traditional independence groups required to operate as a cultural entity (in the context of clans, families or groups). The present circumstances do not permit the development of a First Nations profile on matters of national, generic importance, for example an AFNU.

The illustrative model, as must the final model, proposes a structure that answers all of the matters discussed in the preceding discourse as well as the immediate matters raised above. The illustrative model, as outlined below is clearly not comprehensive, it is however, a base from which to begin consultation and planning.

Essentially the illustrative model proposes the following:

- amalgamation of all of the existing Aboriginal Education units/centres on all campuses across Australia, there are 37 higher education institutions in Australia receiving Aboriginal participation funding from DEET.
- recognition of the AFNU as a bona fide university under the Federal Higher Education Funding Act.
- centralisation of all funding presently distributed to all of the universities across Australia.
- establishment of a standard university management infrastructure and the establishment of an appropriate administrative and academic staff structure.

- retention of all existing community based consultative relationships (management/advisory committees or councils).
- establishing for the first time in the history of Australian higher education a true and sustainable act of self-management and self-determination.

### Conclusion

The Australian First Nations University is achievable because the blueprint is in place. The existing operators in Aboriginal higher education will not lose any of the daily operating autonomy, in fact, that autonomy will increase as each operation is likely to be designated at a faculty level and the success of the faculty will depend upon the on-site managers and their community advisory committee of council.

The cross articulation of degrees, diplomas and certificates with other universities will demonstrate the AFNU contribution to the national higher education sector as one of quality and excellence. The existence of AFNU degrees, diplomas and certificates will also assist in the reconciliation process by informing all students of the complex cultures and aspirations of Australian indigenous peoples.

It is my view and I believe the Interest Group share it, that the only reason that we will not achieve the establishment of the Australian First Nations University will be because we fail to see the effort as being for the good of the greater number.

The illustrative model is not being espoused as the only model nor is the debate on the model closed. We need to have serious discourse and significant negotiations as well as achieve recognition under the Federal Government's Higher Education Funding Act. Once that is achieved, the only way to go is forward.

### Notes

- \* Interestingly defined in Collins English Dictionary - Australian Edition edited by G.A. Wilkes 1986 as "enclave" - n. a part of a country entirely surrounded by foreign territory. ..."

## 'Consent' or 'coercion'? Removing conflict of interest from staff-student relations

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A number of recent articles, some by feminists, have expressed concern about proposals which attempt to limit staff-student sexual involvement. Some say attention is now inappropriately focussing on sex, rather than on sexism. Others express the view that attempts to control such relationships infantilise female students, many of whom are mature age, by denying them the opportunity to make decisions about how they live their lives. Some add the more quixotic qualm that such rules create an atmosphere which is anaemic and which denies the reality that 'knowledge is sexy' (Gallop, 1993; Modjeska, 1993; Wark, 1993). The spate of comments along these lines joins forces with the kind of argument developed by Kate Roiphe that feminism has created a victim mentality for women which is itself disempowering (Roiphe, 1993).

In this paper I attempt to refocus the cause of concern in staff-student sexual relationships, about which I hope there will be some agreement. This I take to be the need to have procedures to handle conflict of interest cases.<sup>1</sup> A second goal of equal importance is to find ways to empower students to use sexual harassment provisions. I will also show how some of the current discussion, much of which is media-driven, creates straw persons which deflect attention from these critical issues.

The title of my paper places the key words 'consent' and 'coercion' in scare quotes to problematise the discourse of sexuality which represents these as women's 'options' (Fudge, 1989). As Carole Pateman perceptively notes, the whole idea that legitimate sex depends upon the woman's 'consent' reproduces a range of assumptions about gender roles, with the male the sexual aggressor and the woman compliant (Pateman, 1989, p.84). We clearly need to finesse our understanding of what is meant by sexual 'choice'. Highlighting the need to remove conflict of interest from staff-student relations will, I argue, expand women's potential to define the kinds of relationships they want.<sup>2</sup>

### 'Where does "consent" end and harassment begin?'

In 1992 I published an article with the above title in *The Australian Universities' Review* (Volume 35, Number 1). In that paper I explained that my chief motivation for addressing the issue of staff-student sexual relationships was my desire to empower students with harassment problems. My experience on the Sexual Harassment Committee of the University of Adelaide in 1989 and 1990 convinced me that students were reluctant to use the complaint mechanisms, even when efforts are made to provide less formal points of access through contact officers. Students still doubted that their complaint would be dealt with fairly.

There is considerable evidence that there is a vast disparity in the general community between the experience and the reportage of sexual harassment.<sup>3</sup> And surveys indicate that often this is because the woman either fears victimisation or believes that her complaint will not be addressed seriously. Both these problems are evident in staff-student interactions since staff are well placed to punish students who challenge them, and since staff hold positions of power in the institutions where the complaint would be handled. It has been argued that the organisational structure of academia which stresses academic au-

tonomy makes it even more difficult to question or monitor staff behaviour.<sup>4</sup>

An additional reason students are unlikely to make complaints, as I argued in 1992, is due to the ambiguity surrounding the nature of sexual relationships between staff and students. Given the tacit acceptance of romantic affiliations between staff and students, the student complainant would face a situation where she would need to prove that the approach from the academic had somehow been 'unacceptable', and where it would only be her word against the staff member's that such was the case.

In response to that situation, I proposed a two-part model for regulations to govern staff-student consensual sexual relations. Under the first part, it would be held to be unethical for academics to have sexual relationships with students for whom they were professionally responsible. This would include marking and/or supervision responsibilities. In these cases, other staff members would have a moral and ethical obligation to report such cases should they become aware of them. I would now specify that other students could report such cases since their interests could be involved. Under the second part, I had proposed that there would be a general understanding that all staff-student sexual relationships are unethical and unacceptable, but crucially in these cases, action against the offending staff member could be taken only by the student concerned.

Here I am proposing to refine my model by focussing on the question of conflict of interest. The model retains two parts. The first remains substantially the same. It suggests that codes of teaching practice make it clear that it is ineumbent upon academics who find themselves in conflict of interest relationships, or conflict of interest situations due to prior relationships, to make arrangements to remove the conflict of interest. This could mean having others do the marking or share the supervision, where alternative supervision arrangements are unavailable, and/or removing themselves from processes of evaluation where their sexual relationship (or previous sexual relationship) with one of the candidates in a cohort could compromise or be seen to compromise their judgment.<sup>5</sup>

The second part of my proposal narrows the parameters from *all* staff-student sexual relations to the unethical nature of advances<sup>6</sup> by staff members *where there would be a conflict of interest*, on the grounds that the power (of evaluation, supervision, etc.) which would constitute the conflict of interest could reasonably be experienced as intimidating. As in the 1992 article, only the student concerned could protest if such an approach were made. Clearly if she welcomed the approach, no protest would be lodged. The sexual relationship would still be unethical, however, until the conflict of interest were removed.

In this model women students are empowered in several ways. First, students would feel freer to draw cases of sexual harassment to the attention of authorities in a situation where it was accepted that *first advances* by academics to students, with whom there would exist a conflict of interest, are unacceptable. In fact, as will be discussed below, these advances would themselves constitute sexual harassment, *if they intimidated the student concerned*. Second, students could, as mentioned, take up the proposal of a sexual relationship, and proceed to remove the conflict of interest. And, third, they could initiate the relationship. In this case, the student's approach would not be unethical (since students do not hold the same kind of power over

staff members that staff members hold over students), but the resulting sexual relationship would be unethical until the conflict of interest were removed.

To those concerned about the potentially 'harassed' university lecturer, I would point out simply that academics do not feel constrained to accept advances from students for fear of victimisation in ways students feel constrained. Of course, if the student persists or becomes threatening, sexual harassment mechanisms are available for lecturers to invoke.

In the remainder of the paper, I explain the rationale for the proposed model. I also specify the nature of the arrangements best able to deal with the situations described.

The shift in focus to conflict of interest will not solve all problems of inappropriate sexual behaviour. It does not attempt to address cases of abuse of trust where academics use their position of power and prestige to initiate sexual relationships they intend to treat casually. Nor will it provide redress for all kinds of sexual harassment. It is restricted to instances where hierarchical power is unequal. Hence it says nothing about student/student sexual harassment, which is a serious problem. And it can do little to address the problems created by men's gender power, such as male student/female lecturer harassment.<sup>7</sup>

Its chief strength is that it highlights the cause of concern, which is the power academics hold because of the control they exercise over student grading and evaluation (including ranking for scholarships, letters of reference, etc.). The existence of this power clearly compromises the response of the student approached. Hence, it is incumbent upon university authorities to address this power imbalance. The focus is not, as is often alleged, upon sex, but upon the abuse of power to extract sex.

### What constitutes conflict of interest?

When I wrote the article in 1992, I thought it unnecessary to detail the reasons why sexual relationships where there were conflicts of interest were unethical. I delivered a paper to a wide audience on the subject at the University of New England in April 1992, and members of the general public expressed incredulity that universities actually allowed academics to evaluate students with whom they were or had been sexually involved. If one were to look back to earlier administrative rules, it would not be unusual to find provision that academics not mark or supervise spouses or other members of their family. And yet, when it is suggested to broaden this to include those with whom one is or has been intimately involved, this is described as an attempt to 'ban' sex from university campuses.<sup>8</sup>

The basis of a conflict of interest is that one is unable to perform or be seen to perform properly one's professional obligations because of countervailing personal commitments. The focus in my analysis is on conflict of interest due to sexual relationships, existing or past, which could result in favouritism or victimisation of the student concerned, though it is clear that the spectrum of conflict of interest is wider than this.

The recent University of Technology Sydney (UTS) *Code of Conduct* defines a conflict of interest as a situation '... where an employee engages in activities or advances personal interests at the expense of the University's interests or the interests of other employees'. It includes as examples financial conflicts '... where an employee who has a financial interest in a company is in a position to influence contracts for business between that company and the University', and situations where employees are working with family members or with persons with whom they develop close relationships. In the latter case, they specify the potential conflict if a staff member is involved in a decision relating to the selection, appointment or promotion of another, or in a supervisory relationship to another and is 'responsible for employment related decisions'. The case of 'personal and family relationships between employees and students' receives separate comment:

As employees we have a responsibility to our students to assess their work fairly, objectively and consistently across the candidature for

their particular subject/course. A personal or family relationship between an academic employee and a student has the potential to compromise this responsibility directly by creating a conflict of interest where the employee is responsible for the supervision, teaching and/or any level of assessment of that student, or indirectly by affecting a student's interaction with the University (emphasis added).

UTS acknowledges that it is often difficult to avoid placing ourselves where there is a potential conflict of interest, but holds the lecturer concerned responsible for disclosing immediately such conflicts (UTS, 1992, pp.1-4).<sup>9</sup>

The University of South Australia's (USA) draft *Code of Good Practice* focusses on conflicts of interest generated by staff-student relationships. The proposed policy states that '... it is important that staff avoid situations where family, sexual or other close personal relationships with students could influence academic or professional judgements and decisions and the climate in which the learning/teaching process occurs' (emphasis added). It stipulates:

3.1 That staff recognise their professional and ethical responsibility to protect the interests of students, to avoid conflicts of interest, to respect the trust involved in the staff/student relationship and to accept the constraints and obligations inherent in that responsibility.

3.2 That to embark on a sexual or other close personal relationship with a student will involve serious difficulties arising from the unequal power, and thus unequal choice of the parties concerned, as well as problems in maintaining the boundaries of professional and personal life. Some relationships may disrupt the teaching and learning environment for other students and colleagues (emphasis added).

USA notes that such relationships affect fellow students and colleagues as well as 'the learning and working environment', and '... may provide cause for complaint from other staff and students'. The draft *Code* also draws to the attention of the University community that '... students who feel their academic progress depends upon consenting to a sexual relationship with a member of staff have the right to complain of sexual harassment'. The policy procedures go further by making the right of complaint under sexual harassment guidelines available to students '... who are or have been involved in sexual or other close personal relationships with staff and who do not consider their involvement to be truly consensual'.

As far as procedures are concerned, USA is more explicit than UTS. In situations where a staff member is '... currently or recently involved in a sexual or other close personal relationship or is a family member of the student', staff are obligated to declare their interest and remove themselves from the following activities related to the student: selection for entry to the University; selection for any undergraduate or postgraduate course offered by the University; assessment procedures; selection for any scholarship or prize; honours or postgraduate supervision; preclusion or disciplinary matters, '... unless these procedures have been appropriately varied with the approval of the Dean of Faculty' (USA, 1993, pp.1-4).

USA's draft *Code* details the need to make alternative arrangements in cases of conflicts of interest. It also makes clear that in cases where such conflicts are not declared, '... academic judgements or decisions made with respect to the student will be revisited', though no disciplinary action will be taken against the academic.

There is much to recommend in USA's draft code though I find it unfortunate that the student will bear the cost of the academic's unprofessional conduct. And, while it is laudatory to open up the possibility of complaint to students who decide 'after the fact' that their participation in a sexual relationship was not truly consensual, it is difficult to imagine many students taking advantage of this provision. If students hesitate now to bring forward cases of egregious sexual harassment, they will certainly be reluctant to put the case that they felt compromised in a sexual relationship with an academic but 'went ahead' anyway. Women students would understandably be

particularly hesitant to make such a claim given the widespread stereotype of women as vindictive when 'affairs' 'go wrong'.

The reason for the UTS and USA injunctions regarding conflict of interest patently is fairness. This does not mean treating all students the same, since some will have specific requirements. But it does mean that no student should be singled out either for favourable or unfavourable attention because an academic is in or has recently been in a close personal relationship with them.

How wide the conflict of interest net should be cast is debatable. Some authors have argued that academics should avoid friendships with students on the grounds that it would give those students some degree of preferment, even if this meant only more time in the academic's company (Markie, 1990; Audi, 1990).<sup>10</sup> Some would argue that such a rule would undermine attempts to overcome the hierarchical nature of staff-student interactions. The key to the boundary here is a decision about what degree of involvement compromises or could reasonably be seen to compromise one's professional obligations. For the purposes of my argument, there should be no debate that a sexual involvement constitutes such a compromise. To those academics who would argue that they are quite capable of objectivity in such situations, it is enough to point out that procedures must not only be fair, they must be seen to be fair.<sup>11</sup>

It is also open to discussion which academic responsibilities ought to be precluded when a conflict of interest exists. USA provides a comprehensive list, while UTS leaves the issue open by referring to an employee indirectly '... affecting a student's interaction with the University' (UTS, 1992, p.3; USA, 1993, p.2). In both cases it is clear that we are talking about situations which go beyond the obvious cases of staff having relationships with students in their classes or with those they supervise. USA's proposed procedures (see above) would suggest that the conflict of interest net should operate at the very least at the Faculty level.

These codes are relatively recent in origin. However, conflict of interest has, as mentioned earlier, been a recognised problem in universities for many years. The university staff association (FAUSA) recognised the problem in 1989 and made it clear that it would have no obligation to defend staff members who failed to abide by a policy that they '... take suitable measures to remove themselves from any supervisory or assessment role involving students with whom they have or have had a sexual relationship' (FAUSA, 1989, pp.43-44). Staff associations overseas have enacted similar guidelines (CAUT, 1990).

These moves indicate a recognition that in many ways academic teaching resembles other kinds of professional activity and hence ought to be governed by similar rules. As in many other professional relationships, such as doctor/patient, priest/parishioner, there is a special relationship of dependency and trust between academic and student. The very nature of the teaching relationship means that students are open to influence. Many academics in fact see their role as 'shaping the minds' of students. In this situation it is incumbent upon teaching professionals to recognise where and when to draw boundaries in their relationships with students (Hunt, 1994).

Peter Rutter believes that the obvious power imbalance between staff and students imposes obligations on the one holding the power. In his view male doctors, academics, priests, lawyers and other professionals who have this special relationship of trust with clients have moral, legal, and ethical responsibilities '... not to allow themselves to become sexually involved with their female patients, clients, parishioners, students, and protégées' (Rutter, 1989, p.19). In Bruce Wilshire's words, 'Professors must place one foot in the ethical if they would contact the pedagogical' (Wilshire, 1990, p.94).

### Unethical advances

If it is accepted that it is unethical for academics to maintain relationships with students where there is a conflict of interest (implying here the need to remove the conflict), it seems more unethical for academics to approach students for non-academic involvement when a sexual relationship with them would constitute a conflict of interest.

Students in this situation may well feel intimidated because the power the academic commands which would create the conflict of interest (eg the power of grading, writing references, etc.) makes it difficult for them to reject the advance. Hence, they are in a compromising situation.

Put oneself for a moment in the place of a female student approached by a male academic for a 'date' when that academic is to sit in judgement on her academic performance and/or to make a range of decisions which will affect her future and her career prospects. The ability to refuse such attention point-blank is compromised by the fear of possible academic repercussions.<sup>12</sup> The psychologists, Robert Glaser and Joseph Thorpe, argue that 'sexual intimacies and propositions' within educator-student relationships '... contain the distinct possibility of being coercive, either subtly or overtly' (emphasis added) (Glaser and Thorpe, 1986, p.43). The philosopher, Robert Audi, agrees that '... the very invitation to join a professor in a purely social activity may be felt to be hard to refuse, or even coercive' (Audi, 1990, p.128).

The intimidating or coercive aspect of such an advance constitutes a form of sexual harassment. Recent amendments to the *Commonwealth Sex Discrimination Act* mean that there is no longer the need for a complainant to demonstrate disadvantage as a result of sexual harassment. It will be sufficient that the complainant felt humiliated, offended, or intimidated by the behaviour in question and that it was reasonable to have felt that way (*Oswomen*, 1992, p.4).<sup>13</sup>

In many instances, disadvantage will result due to the academic repercussions of taking evasive action following such an advance. For example, because of the knowledge that the academic has 'romantic' interest in her, the student would be less likely to go to him for advice. Some women drop courses or even change fields (Benson and Thomson, 1982, pp.243-244).<sup>14</sup> As Phyllis Crocker argues, 'Once a student is propositioned, all her future interactions with, and evaluations by, the professor are tainted and suspect, whether a promise or threat was ever made or carried out' (Crocker, 1983). Clearly, these outcomes undermine attempts to expand women's educational opportunities.<sup>15</sup>

The literature on sexual harassment establishes that, like rape, it is a means of social control. It is a way of telling women that they don't belong, that their most important characteristic is their sexuality. This interpretation is supported by evidence that women who enter male preserves are those most likely to be sexually harassed (Administrative and Clerical Officers' Association, 1983, p.39).

Now, it should not be forgotten that universities are archetypal patriarchies. Historically they were created to educate men, and women were excluded. Today a significant number of students are women, but faculties remain highly sex-segregated, and positions of power are still largely in male hands (Gale and Lindemann, 1988; Bacchi, 1993). Caroline Ramazanoglu describes sexual harassment in the university as a 'structural mechanism' which reproduces a patriarchal order and '... which constructs women as actual or potential threats to this order' (Ramazanoglu, 1987, p.61).

Definitions of sexual harassment vary in detail but agree that it involves unwelcome conduct of a sexual nature. In its most egregious form, advancement or initial employment in the workforce is made contingent upon the acceptance of sexual advances. More broadly, it can be argued that the workplace is so imbued with sexuality that it creates a 'hostile work environment' (Graycar and Morgan, 1990, p.353).

Recently there have been moves to broaden the understanding of sexual harassment to include sex-based or gender harassment. This includes behaviour which stereotypes a 'person' according to gender or to sexual preference, or which openly discusses views in which the 'other sex' is portrayed as inferior or subordinate.<sup>16</sup>

Both sexual and sex-based harassment constitute sex discrimination according to recent legal precedent because they treat women unfavourably because they are women.<sup>17</sup> The commonality is that acts and language are used by men to exclude women from full acceptance and to limit their participation in areas they seek to occupy.



USA's draft *Code of Good Practice*, as already noted, specifies that '... students who feel their academic progress depends upon consenting to a sexual relationship with a member of staff have the right to complain of sexual harassment' (USA, 1993, p.2). The problem here is that staff members are unlikely to state explicitly their desire to engage in sex with a student, though cases like this are not unknown.<sup>18</sup> Students who wish to complain at a first approach from an academic would usually be expected to prove that the approach implied that their academic progress depended upon consent, or that the approach was particularly gross or obnoxious, difficult claims to defend.<sup>19</sup>

Surely it is clear and ought to be acknowledged that an academic who asks a student for a 'date' is expressing non-academic interest in her, and hence is hoping to establish a degree of intimacy, whether that extends to sexual intercourse or not. And surely it is equally clear that an advance of this nature may be perceived to be intimidating by students given the academic's role as evaluator. If it is so perceived, it constitutes sexual harassment.

Equally clearly, should the student welcome the approach, there is no sexual harassment (though as mentioned earlier, the sexual relationship would remain unethical until the conflict of interest were removed). As the President of the NSW Anti-Discrimination Board, Steve Mark, indicates, 'What's important is how the behaviour affects the person it is directed towards' (Mark, 1993, p.5).

If the student suffers subsequently because the academic abuses the relationship or treats it trivially, we are dealing with another kind of problem which requires other kinds of solutions. So far, we seem to be able to do no better than to allow students to complain after the fact either about an abuse of trust, or about their lack of genuine consent in the first place.<sup>20</sup> Given what was said previously about the difficulty of implementing these rules in any meaningful sense, the only option seems to be to inform students about the dangers of unequal sexual relationships and to give them the power to reject them at the outset (Glaser and Thorpe, 1986, p.50). The proposal here is intended to have this effect.

Now it might be said that few approaches will be made by academics given a change in culture which will paint such approaches as unethical, and hence that I am imposing a 'blanket ban' by ruse. Doubtless, the effect of my proposal would be to discourage academic advances, and it would be dishonest to pretend that I did not see this as desirable. But it will not rule out such advances, nor will it prevent sexual relationships from developing when they are welcome on both sides. In addition, there is nothing in the proposal to interfere with inter-Faculty or inter-University relationships, nor to prevent the student from initiating a sexual relationship. (Of course, if the latter occurred and a relationship commenced, it would be incumbent upon the academic to inform the appropriate authorities and to make arrangements to remove the conflict of interest).

This last comment may provoke concern about what I call the 'vindictive woman' syndrome. This is the suggestion that women students will use this 'weapon' to punish academic lovers who eventually reject them. The academic literature on rape which addresses the related phenomenon of the 'false charge' confirms that this is a misrepresentation of the problem. What should concern us is not the fear that the occasional male academic may stand wrongly accused, but the vast silence about the number of women who are abused but who are understandably reluctant to use established complaint procedures (Naffine, 1992).

## Responses

There are three places where it is appropriate to address the issues raised in this article: administrative handbooks, codes of ethics or codes of conduct, and sexual harassment guidelines. A combined approach is most likely to raise consciousness about the kinds of problems which can emerge in staff-student sexual relationships, and to produce a desirable shift in the culture of the university from concern with academic 'freedom' to sensitivity to student needs.

Administrative handbooks ought to list simply the kinds of situations which contravene the normal performance of academic duties.

Hence, some specific reference to the need to avoid conflict of interest situations and to make alternative marking and supervision arrangements where such arise is appropriate.

There is a good deal of talk about ethics in the community these days, reflecting perhaps a desire for more certainty in the nature of our social interactions. Since such codes have not eliminated unethical behaviour among those groups which have them, I am not convinced that appeals to ethics will prove effective.

As Nordenstam and Tornebohm point out, 'Codes of professional ethics often have the character of defenses of the interests of the profession rather than of instruments for protecting the interests of all parties concerned'. In their view such codes must be accompanied by education in 'ethical competence' (Nordenstam and Tornebohm, 1978, pp.14-15).

Still, the notion of a code of ethics for teaching professionals appears to be an ideal way to establish and publicise a community expectation about appropriate behaviour. Such codes could be introduced via staff associations, as has happened in Canada (CAUT, 1990), via disciplinary associations, or via University codes of conduct, as in the cases of UTS and USA.

Such codes should follow the lead of USA and stipulate that academics recognise their professional and ethical obligation to 'avoid conflicts of interest', and hence that '... to *embark* on a sexual or other close personal relationship with a student will involve serious difficulties arising from the unequal power' (emphasis added) (USA, 1993, p.2). A clause stating that academics ought not to initiate relationships with students where there would be a conflict of interest would clarify and strengthen these proposals.

Existing sexual harassment guidelines could then also be strengthened by building upon USA's provision that '... students who feel that their academic progress depends upon consenting to a sexual relationship with a member of staff have the right to complain of sexual harassment'. I would suggest the following wording: 'students who feel intimidated by an approach from an academic to take part in non-academic activities such as dating have the right to complain of sexual harassment'. Given the legal obligation for employers to provide environments free from the risk of harassment, it is incumbent upon universities to include some such provision in sexual harassment guidelines.<sup>21</sup>

## 'Who wrote the (rule) book of love?'

I commenced this article with a passing reference to the spate of comments in the popular press about the topic of staff-student sexual relationships. I hinted then that I consider much of the debate to be wrong-headed and to misidentify the problem. Part of the reason for this is undoubtedly the way in which articles about sex make good press, as do articles suggesting that feminists are wowsers and/or may be rethinking their analysis. To illustrate the point, much is made of the exception to prove the rule. I refer here to the disproportionate attention paid to the Antioch code which attempts to delimit the character of sexual contact *between students*, not between staff and students (Bagnall, 1994, p.27).

Much is also simple misrepresentation. Take, for example, the recent *Harper's* article which reported a discussion among academics opposed to all proposed codes. The tone of the article is similar to many these days which attempt to castigate attempts to redefine cultural norms oppressive to certain groups in the community as 'political correctness'. We are told that sexuality has become 'a substitute for politics' in America, that the codes are built on the supposition that 'freshmen (sic) are naive eighteen-year olds who need protecting', that the 'ban is being promoted by feminists', that legislation '... distorts the fundamental integrity of the university, which is self-regulation and respect for truth', that those '... pushing for bans are people who fear real life, especially the protean power of lust', that we are entering an '... era when a leer constitutes rape', that '... it's a wretched culture indeed that can't make room for flirtation', and that by setting up a law we are stripping academics of their ability to teach (Harpers, 1993).

Only Leon Botstein, President of Bard College and the Music

WHO WROTE THE (RULE) BOOK OF LOVE			
University	Date of Policy	Policy	Punishment
College of William and Mary	June 1991	"Faculty members are advised against participating in amorous relationships with students enrolled in their classes or with students whom they... evaluate, grade, or supervise." If a professor does become involved with his or her student, "the faculty member shall report the situation promptly and seek advice and counsel from an appropriate administrative superior."	"Members of the university community who believe themselves to be affected adversely by violation of this policy may initiate a complaint with the appropriate dean." No specific sanctions.
Tufts University	January 1, 1992	"It is a violation of University policy if a faculty member... engages in an amorous, dating, or sexual relationship with a student whom he/she instructs, evaluates, supervises, advises. Voluntary consent by the student... is suspect."	"Disciplinary action."
Indiana University	June 1992	"All amorous or sexual relationships between faculty members and students are unacceptable when the faculty member has professional responsibility for the student... Voluntary consent by the student in such a relationship is suspect, given the fundamental asymmetric nature of the relationship."	No specific sanctions.
Harvard and Radcliffe Colleges	September 1992	"Officers and other members of the teaching staff should be aware that any romantic involvement with their students makes them liable for formal action against them... Amorous relationships between members of the Faculty and students that occur outside the instructional context can also lead to difficulties."	No specific sanctions.
Amherst College	March 2, 1993	"The College does not condone, and in fact strongly discourages, consensual relationships between faculty members and students. ...The College requires a faculty member to remove himself or herself from any supervisory, evaluative, advisory, or other pedagogical role involving the student with whom he or she has had or currently has a sexual relationship."	Sanctions are being reviewed this fall.
Oberlin College	June 1993	"It is unwise for faculty members to engage in sexual relationships with students even when both parties have consented to the relationship... Relations are prohibited when a student is enrolled in a class taught by the faculty member."	"Offences involving abuse of power, as opposed to misconduct between equals, and especially repeated abuses of power are always severe and may result in dismissal."
Stanford University	Expected fall 1993	"Relationships may undermine the real or perceived integrity of the supervision and evaluation provided, particularly the trust inherent in the student-faculty relationship."	None

You're a college administrator. For the past semester, your campus has been embroiled in a heated debate over faculty-student sex, a debate filled with arguments about rights, victims, abuse, and heartbreak. Now comes the hard part: actually formulating the ban. How do you shrink the vicissitudes of the heart into the language of the academic-policy manual? Above, some attempts to do just that.

## Figure One

Director of the American Symphony Orchestra, acknowledged that 'There is a power differential in the relationship between a student and his or her teacher. And a sexual relationship between a teacher and a student is, in fact, at odds with the task of teaching'. Botstein recognised conflict of interest as a problem: 'I happen to think ... that the process of teaching is a process of the adjudication of fairness. So my conclusion is that when you are having sexual relations with one of your students, you are in this sense being unfair to the others'. Yet he remains opposed to the 'bans'.

The *Harpers'* article contains a chart (p.36), reproduced here (see figure one), of some existing policies meant to illustrate the kinds of 'bans' being criticised. Given the article's slant on the subject, it is probably safe to assume that these represent the 'worst case' scenario. The examples are offered under a heading 'Who Wrote the (Rule) Book of Love', and the caption describes them as attempts to '... shrink the vicissitudes of the heart into the language of the academic-policy manual'.

Even a cursory reading of these policies makes clear that the concern in each case is not at all the 'vicissitudes of the heart' but conflict of interest. Each specifies a primary concern with those relationships where faculty members are or intend to become involved with students whom they '... evaluate, grade or supervise' (College of William and Mary). Preclusion of relationships and disciplinary action is confined to such cases. Some universities don't even go this far. Stanford is

satisfied to speculate that 'Relationships *may undermine* the real or perceived integrity of the supervision and evaluation provided ...'.

Regarding relationships where there is no conflict of interest, the proposals advise caution. Oberlin College suggests 'It is unwise for faculty members to engage in sexual relationships with students even when both parties have consented to the relationship (emphasis added)'. Relations at Oberlin, as elsewhere, are 'prohibited' only 'when a student is enrolled in a class taught by the faculty member'. Harvard and Radcliffe suggest similarly that 'Amorous relationships between members of the Faculty and students that occur *outside the instructional context* can also *lead to difficulties* (emphasis added)'. It is difficult to describe these proposals as 'bans' in any commonly accepted sense of the term.

The *Harpers'* article illustrates the way in which an important subject for staff and students, how to prevent abuse of power in staff-student sexual relationships, is turned into a talking point for academics preoccupied with other political agendas. It is most unfortunate when academics who would usually oppose these other agendas fail to see how the subject is being put to this purpose.

## Conclusion

Other contributors to this debate will undoubtedly expand upon the nature of the pedagogical relationship and the complications created when sexual intimacy enters that relationship. I have chosen a narrow

target — the unethical nature of sexual relationships which involve a conflict of interest with academic duties, and the way in which potential conflict of interest might intimidate students approached by an academic for non-academic involvement. Such a focus, I argue, returns the discussion of this subject to the power academics wield and the way in which this power compromises sexual consent.

None of this infantilises students. Any person confronting this power differential would be equally compromised. Nor does my proposal encourage a victim mentality among women. On the contrary, through mechanisms which effectively reduce the power imbalance between staff and students, women become freer to assert themselves. I fail to see how making avenues of complaint available to women typecasts them as victims.

Most Australian universities have responded to their obligation under the federal Sex Discrimination Act to create an environment free from sexual harassment by establishing complaint procedures and tribunals to investigate complaints. However, they and other employers have failed to address the obvious problem that the power differential which creates the possibility of sex-based harassment also creates an atmosphere where the harassed will be unlikely to use those procedures. One way to address this problem is to recognise officially that a first approach by an academic who has professional responsibilities for a student compromises the response of that student.

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## Footnotes

Thanks to Alison Mackinnon, Margaret Thornton, Brian Martin, Gail Reekie, Ngaire Naffine, Jill Matthews, Barbara Sullivan, and Dorothy Broom for comments and suggestions.

1. This article deals with staff-student sexual relationships in tertiary institutions. Conflict of interest is considered a factor when staff have professional responsibilities, such as evaluation or supervision responsibilities, for students. This applies regardless of the sex or age of the students.
2. While it is obvious that there are many men students with problems, I will be dealing in particular with the problems facing women students. This is appropriate given the fact that most university teachers are men, and hence are likely to be the ones making advances to students, who will most often be women. Nonetheless, all that is said about conflict of interest and empowering students applies equally to men students, and to same-sex relationships.
3. A recent report from the Human Rights and Equal Opportunity Commission (1993) *Eliminating Sexual Harassment from the Workplace*, summarises a number of studies which confirm this discrepancy. As just one example, surveys in the United States suggest that of the 40 to 65 per cent of women who report sexual harassment in response to surveys, only about five per cent had filed complaints.
4. Dziech and Weiner describe aspects of educational institutions that facilitate harassment, including the autonomy afforded the faculty, the diffusion of authority that permits lack of accountability, and the shortage of women in positions of authority. The latter is important because there is evidence that men and women perceive sexual harassment differently. B. Dziech and L. Weiner (1984) *The Lecherous Professor*, Boston, Beacon Press. On the latter point, see Stephanie Riger, 'Gender Dilemmas in Sexual Harassment: Policies and Procedures', in Sherri Matteo, ed. (1993) *American Women in the Nineties: Today's Critical Issues*, Boston, Northeastern University Press, pp. 213-234.
5. For example, in ranking students for scholarships, it is clearly necessary for staff members to remove themselves from the entire process if their respective sexual partners (or former partners) are in contention. Here, it would be inadequate simply not to comment on the partner's (or former partner's) status

as judgements on other candidates would affect this status. I thank Jill Matthews for drawing this point to my attention.

6. I have selected the word 'advance', meaning a first step or approach, to speak about the range of activities preliminary to sexual involvement. It includes asking students for 'dates' which are clearly intended for intimate non-academic purposes, and those which pretend to have academic purposes in mind.

7. Gender power is fundamental to sexual harassment. Virtually all research indicates that the culture attributes more power to men simply because of their gender. Gender power makes even women in positions of authority vulnerable to sexual harassment. On this subject, see J. Stringer et al (1990) 'The Power and Reasons Behind Sexual Harassment: An Employer's Guide to Solutions', *Public Personnel Management*, Vol 19, No. 1. I am only too aware that women lecturers often face serious sex-based harassment from men students, but still feel that women students have particular needs which can best be addressed through this proposal. It is possible that broadening the understanding of sexual harassment to sex-based harassment may provide some assistance to women lecturers.

8. The Equal Opportunity Officer at the University of Adelaide cleverly warded off such protest simply by amending the older administrative guideline which precluded staff from involvement in a number of employment related and academic responsibilities when they concerned a member of the immediate family to include 'close personal relationships'. See *The University of Adelaide: Handbook of Administrative Policies and Procedures*, Sub-sections 4.2 and 7.5.

9. UTS does not spell out clearly what follows disclosure. The Code stipulates only that 'All senior staff assisting the resolution of conflict of interest must ensure that the process is conducted fairly, that information disclosed is treated confidentially and that where possible, a resolution is arrived at which is agreed to by the individual employee concerned'.

10. Given that close friendships between male staff and male students have often benefited those students at women's expense, this is an argument which merits closer attention. I thank Kathy Mack for drawing this point to my attention.

11. In a discussion on the subject in *Harpers' Magazine*, September, 1993 (referred to in more detail later in this paper), William Kerrigan, professor of English and the director of the Program on Psychoanalytic Studies at the University of Massachusetts (Amherst), argued that he was quite capable of comparing a 'beloved's talent' to others in a contest, and that in fact the person in such a relationship might be 'in the best position of all to make the judgement or write a letter of recommendation'. Peter Markie would reply that 'Professors have a *prima facie* moral obligation not to act in a way that will lessen the credibility and so the worth of their evaluations', and '... the appearance of favouritism is enough to lessen the credibility of a professor's evaluation'. See Markie, 'Professors, Students, and Friendship', p.143.

12. Surveys indicate that students in this situation often do not feel free to refuse an instructor's attention. Nancy ("Ann") Davis, 'Sexual Harassment in the University', in Steven Cahn, *Morality, Responsibility and the University*, op.cit., p.155.

13. It should be noted that South Australian Equal Opportunity legislation has defined sexual harassment in this way for some time.

14. For those who think that leaving a course is a relatively easy solution to the problem, see Martha Mahoney (1992) 'Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings', *Southern California Law Review*, Vol. 65, pp. 1293-1319. Mahoney shows the serious implications of leaving a job (and by implication a course training one for a job) and how some women try to 'stick it out' in harassment situations. She also examines the theoretical implications of an analysis which assumes that 'exit' is an easy answer.

15. These effects are substantiated by other studies of sexual harassment. According to Nancy Davis, the most common form of 'managing the trouble', as students call it, is avoidance: '... the student drops the course, ceases to attend the class, withdraws the application to be a lab assistant, quits coming to office hours, changes her major, or, in the most extreme cases, drops out of school altogether'. A study of sexual harassment at Berkeley University concluded that one of the main long-term consequences of sexual harassment has been the '... cumulative effect of eroding women's commitment to careers in male-dominated areas'. Studies of sexual harassment in employment show that in many cases women leave the jobs rather than confronting the harasser. Given the power differential and the lack of faith in administrative disciplinary measures, evasive action often seems the only option available. Davis, op. cit., p.163. Human Rights and Equal Opportunity Commission, op. cit., p.22.

16. The Australian Defence Force's instruction DI (G) PERS 35-3 entitled 'Unacceptable Sexual Behaviour by Members of the Australian Defence Force' defines gender harassment in these terms. The careful preservation of gender-neutral language indicates a common reluctance to acknowledge that women are most often the targets of such harassment.

17. Sections 28 and 29 of the 1984 *Commonwealth Sex Discrimination Act* make sexual harassment in employment and education unlawful.

18. In Benson and Thomson's study, sexual 'propositions' ranged from vague to blatant: '... invitations ranged from a dinner date to a weekend at a mountain resort'. Benson and Thomson, op. cit., p.242.

19. According to Stephanie Riger, courts in America have required that incidents falling into the category of 'an intimidating, hostile, or offensive working environment', must be repeated in order to establish that such an environment exists, and the incidents must be pervasive and so severe that they affect the victim's psychological well-being'. Riger, op. cit., p.216.

20. The EEO Sexual Harassment Sub-committee of the University of Wollongong has recently published a pamphlet, entitled 'Campus Sex: A Cause for Concern?', which addresses some of these issues. See also USA Code (draft), p.3.

22. The *Commonwealth Sex Discrimination Act (1984)* stipulates that sexual harassment is unlawful, and under section 106 holds an employer vicariously liable unless 'all reasonable steps were taken to prevent the employee or agent committing an act of sexual harassment'. Chris Ronalds (1987) *Affirmative Action and Sex Discrimination: A handbook on legal rights for women*, Sydney, Pluto Press, p.120.